IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.1000 of 2007

G.P.Pushpa .. Petitioner

Vs

1. The State of Tamil Nadu
   rep. by its Secretary
   Prohibition and Excise Department
   Fort St. George, Chennai-600 009.

2. The Commissioner of Police
   Chennai Police
   Egmore, Chennai-8. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.V.S.Ilango

For Respondents: Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The petitioner is the mother of the detenu, Ravi, son of Govinaswamy. The detenu was incarcerated by order dated 22.6.2007 of the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Goonda. Hence, the petitioner seeks a writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second

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respondent dated 22.6.2007 in Memo No.259/BDFGISSV/2007 against her son Ravi, to set aside the same and to direct the respondents to produce the above said detenu before this Court and set him at liberty.

2. The order of detention dated 22.6.2007 came to be passed based on the ground case said to have taken place on 4.6.2007 at about 13.00 hours, on the basis of the complaint lodged by one Jahir Hussain before the Inspector of Police, Law and Order, T-12 Poonamallee Police Station. According to the complainant, while he was walking at Cantonment Amman Koil Street, the detenu herein, waylaid him and demanded money at the knife point. Out of fear, the complainant handed over his cell phone and wrist watch. The detenu voluntarily inserted his hand into the shirt pocket of the complainant and took away Rs.160/-. The complainant raised hue and cry. When the people who were nearby came for his rescue, they were threatened by showing knife. In this regard, a case was registered in Crime No.508 of 2007 on the file of T12 Poonamallee Police Station for the offences punishable under Sections 341, 307, 427 and 506(ii) IPC. The detenu was arrested on the same day at about 18.00 hours and remanded to judicial custody.

3. The second respondent, taking note of the above case as a ground case and finding that there are four adverse cases pending against the detenu for the offences punishable under Sections 341, 323, 324, 294(b) and 506(ii) IPC and Section 75 of M.C.P. Act, and having satisfied that there is a compelling necessity to detain him in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a Goonda.

4. The learned counsel for the petitioner challenges the impugned order of detention dated 22.6.2007 on the main ground that even though in the grounds of detention, it is mentioned that the detenu was in remand in Crime Nos.498 of 2007 and 508 of 2007, no supporting material viz., the remand extension order passed by the Judicial Magistrate in Crime No.498 of 2007 has been furnished to the detenu to show that the detenu was in remand at the time of passing the impugned detention order. According to the learned counsel, in view of the non supply of the essential document viz., remand extension report, the detenu was not in a position to make an effective representation and hence the order of detention vitiates. In support of his contention, the learned counsel for the petitioner relied upon the decision of the Apex Court in POWNAMMAL v. STATE OF TAMIL NADU AND ANOTHER [A.I.R. 1999 SC 618].

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5. In POWNAMMAL v. STATE OF TAMIL NADU, cited supra, where the Tamil version of the remand order, which is a relied upon document was not supplied to the detenu even though it was demanded by the detenu, the Apex Court held thus -

> " 15. Adverting to the facts of this case, the appellant has made a representation for supply of Tamil version of the copy of order of remand and specifically stated that the detenue could not understand English language. Admittedly, Tamil version of order of remand was not furnished to her. A perusal of the grounds shows that the order of remand was relied upon by the second respondent to reach subjective satisfaction, so the detenue need not show that any prejudice was caused to her due to non-supply of the Tamil version of order of remand. Therefore, the High Court is not correct in holding that non-furnishing of the copy of the order of remand would not in any way prejudice the detenue."

6. In view of the decision of the Apex Court cited supra, we find some force in the argument of the learned counsel for the petitioner that the detenu was prejudiced by non-supply of the remand extension order, as he had been deprived of his opportunity to make an effective representation and hence, the impugned order of detention vitiates.

In the result, the habeas corpus petition is allowed and the order of detention is set aside. The detenu Ravi is directed to be set at liberty forthwith, unless he is required in connection with any other case.

ATR

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Secretary to Government
   Prohibition and Excise Department
   Secretariat, Chennai-600 009.

2. The Commissioner of Police
   Chennai Police
   Egmore, Chennai-8.

3. The Superintendent,
   Central Prison,
   Puzhal, Chennai.

4. The Public Prosecutor,
   High Court, Madras.

5. The Joint Secretary
   to the Government of Tamil Nadu,
Public (Law and Order) Department,
Fort St George, Chennai 9.

+ 1 cc to Mr. V. S. Ilango, Advocate SR No. 65399

NG(co)
SR/5.11.2007

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